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CORRESPONDENCE.

JURISDICTION OF THE SUPREME COURT OF APPEALS—SEC. 3455 VA. CODE 1904.

To the Editors of Virginia Law Register:

In investigating recently the changes made in the jurisdiction of the Court of Appeals by the Constitution of 1902, I find that the annotations to sec. 3455 of the Code fail to note two changes which seem to me to be of sufficient importance to deserve attention.

In the cases of *Prison Association v. Ashby*, 93 Va. 667; *Price v. Smith*, 93 Va. 14; *Barnett v. Meredith*, 10 Gratt. 650; *Page v. Clopton*, 30 Gratt. 415, and *Gresham v. Newell*, 84 Va. 784, the court held that sec. 2, Art. 6 of the Constitution of 1869 did not *proprio vigore* confer jurisdiction upon the court, but that it simply invested the court with capacity to receive jurisdiction in the enumerated cases in the event that the legislature saw fit to confer it.

The doctrine of these cases is given on page 1838 of the Code of 1904, but no mention is made of the effect thereon of sec. 88 of the Constitution of 1902.

That section provides: "Subject to such reasonable rules as may be prescribed by law as to the course of the appeal, the limitation as to time, the security required, if any, the granting or refusing of appeals, and the procedure therein, it shall, by virtue of this Constitution, have appellate jurisdiction in all cases involving the constitutionality of a law as being repugnant to the Constitution of this State or of the United States, or involving the life or liberty of any person: and it shall also have appellate jurisdiction in such other cases within the limits hereinafter defined, as may be prescribed by law."

From this language it seems clear that the present Constitution does *proprio vigore* confer appellate jurisdiction upon the Supreme Court in all cases involving the constitutionality of a law, or the life or liberty of a person. In all other cases the rule seems to remain as before.

In the case of *Price v. Smith*, above, the court says: "This section (3455) prohibits an appeal . . . where the judgment or decree is for a matter less in value than five hundred dollars, unless there be drawn in question a freehold or franchise, or the title or bounds of land, or some other matter not merely pecuniary. The words 'or some matter not merely pecuniary' which appear in the Act are not found in the Constitution (Art. 6, sec. 2, 1869), hence those words, as used in the statute, mean only such 'matters not merely pecuniary' as are enumerated in the Constitution."

A reference to the present Constitution, sec. 88, will show that the words "or some other matter not merely pecuniary" are used in connection with and immediately after the enumerated matters in the Constitution, so that now sec. 3455 of the Code and sec. 88 of the Code are in entire consonance. In accordance with the rule in such cases, therefore, it would appear that under the present law, if a judgment or decree involves any matter not merely pecuniary, whether one of the matters embraced in the constitution or not, an appeal will lie irrespective of the amount involved, and that in this respect, also, the decision in *Price v. Smith* is superseded.

Richmond, Va., Feb. 24, 1905.

W. M. JUSTIS, JR.